

ENTERED

May 23, 2023

Nathan Ochsner, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

WILLIE DICKERSON,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS
AFFAIRS, *et al.*,

Defendants.

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CIVIL ACTION NO. H-21-3805

ORDER

The plaintiff, Willie Dickerson, filed a 14-page sur-reply in response to the defendants' 8-page reply on the motion for summary judgment, without first seeking leave of court. (Docket Entry No. 67). The defendants have moved to strike the sur-reply on two bases: (1) Dickerson failed to seek leave of court before filing the sur-reply; and (2) a sur-reply is not appropriate because no new evidence or legal theories were raised in the defendants' reply. (Docket Entry No. 69). In response to the motion to strike, Dickerson has now filed a motion for leave to file a sur-reply. (Docket Entry No. 70).

A sur-reply is appropriate "only when the movant raises new legal theories or attempts to present new evidence at the reply stage." *Makhlouf v. Tailored Brands, Inc.*, 2017 WL 10922311, at *5 (S.D. Tex. Mar. 23, 2017) (collecting authority). Leave to file a sur-reply is not appropriate "where the proposed surreply does not include new arguments or evidence or merely restates arguments in the movant's response." *Id.*

Dickerson has failed to identify any new legal theory or evidence that was raised in the defendants' reply, certainly nothing that would justify the filing of a sur-reply nearly twice as long as the reply itself. All the legal theories and evidence that Dickerson points in his motion for leave,

(Docket Entry No. 70), have already been raised repeatedly in the briefing. The fact that the defendants' reply stated that the plaintiff failed to address certain arguments in his responsive briefing is not itself a new argument.

The plaintiff seeks leave to file a sur-reply so that he can restate the exact same arguments he has already stated. That is neither appropriate nor necessary. The motion for leave to file a sur-reply, (Docket Entry No. 70), is denied. The motion to strike the sur-reply, (Docket Entry No. 69), is granted.

SIGNED on May 23, 2023, at Houston, Texas.

A handwritten signature in black ink, reading "Lee H. Rosenthal". The signature is fluid and cursive, with a large, sweeping loop at the end of the last name.

Lee H. Rosenthal
United States District Judge